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SUPREME COURT OF NEW JERSEY

ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

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CLERK

DOCKET NO: ACJC 2008-116

IN THE MATTER OF

PRESENTMENT

LAWRENCE P. DeBELLO,
JUDGE OF THE SUPERIOR COURT

The Advisory Committee on Judicial Conduct ("Committee" or "ACJC") hereby presents to the Supreme Court its Findings and Recommendation in this matter in accordance with Rule 2:15-15(a) of the New Jersey Court Rules. The Committee's Findings demonstrate that the charges set forth in the Formal Complaint against Lawrence P. DeBello, Judge of the Superior Court ("Respondent"), have been proven by clear and convincing evidence. The Committee recommends that the Respondent be censured.

On March 4, 2009, the Committee issued a Formal Complaint in this matter, which contained three primary allegations against Respondent: (1) that Respondent exchanged inappropriate, intimate emails with a former law clerk via Respondent's Judiciary email account and persisted in such activity after being advised to desist by his Assignment Judge in violation of

Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules; (2) that Respondent gave misleading answers to Committee staff when asked about his interactions with his former law clerk in violation of Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules; and (3) that Respondent made an inappropriate and unsolicited contact with an attorney in an attempt to help his former law clerk secure employment in violation of Canons 1, 2A, and 2B of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Respondent filed an Answer to the Complaint on March 23, 2009 in which he admitted most of the factual allegations of the Formal Complaint.

Respondent waived his right to a formal hearing in this matter. Exhibits were offered by the Presenter and accepted into evidence by the Committee. Both the Presenter and Respondent offered legal memoranda in support of their respective positions, which were also considered by the Committee.

After carefully reviewing all of the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

A. Factual Background

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1982. At all times relevant to this matter, Respondent was a Judge of the Superior Court of New Jersey, Family Part. He initially sat in the Hudson Vicinage but, beginning on or about January 22, 2008, was assigned to the Mercer Vicinage, where he continues to sit today.

From September 2006 until August 31, 2007, Respondent worked with a female law clerk ("former law clerk"). Beginning in September 2007 until approximately July 2008, Respondent continued to communicate with his former law clerk, primarily by use of his Judiciary email account. P-9 and P-13. At some point, the Honorable Maurice J. Gallipoli, A.J.S.C., Respondent's Assignment Judge at the time, came into possession of various email exchanges between Respondent and his former law clerk dated November 28, 2007 and November 29, 2007. In these emails, Respondent and his former law clerk discussed matters of an intimate nature and used inappropriate and distasteful language. P-1 at ACJC 004-005.

On December 4, 2007, Judge Gallipoli interviewed Respondent in the presence of Hudson Vicinage Trial Court Administrator Joseph Davis about Respondent's interaction with his former law

clerk. P-1. During the interview, Respondent admitted to engaging in the November 28 and 29, 2007 email exchanges and further admitted that, beginning in September 2007, he had participated in other, similar email exchanges with his former law clerk. Id. According to Judge Gallipoli, Respondent acknowledged that the email exchanges with his former law clerk were inappropriate and improper and represented they would cease. P-1; P-16 at T12-19 to 13-14.

Despite the representations he made to Judge Gallipoli, Respondent continued to communicate with his former law clerk via his Judiciary email account after December 4, 2007. In fact, from December 2007 through January 2008, the emails sent between Respondent and his former law clerk intensified with respect to their highly personal, romantic and intimate content. P-9.

From February 2008 through July 2008, the email exchanges continued but largely concerned the former law clerk's efforts to secure employment in the legal field and Respondent's attempts to assist her. P-13. In this regard, Respondent placed an unsolicited telephone call in June 2008 to Edward Marable, the Deputy Public Defender for the Northwest Region of the Office of the Public Defender, Office of Law Guardian regarding the former law clerk's interest in working for the Office of Law Guardian. P-14 at ¶5.

On October 20, 2008, Respondent was interviewed by John Tonelli, Executive Director of the Advisory Committee on Judicial Conduct, and Jennifer Endrzejewski, an investigator for the Committee, in connection with this matter. P-15. Before the interview commenced, Respondent was placed under oath. Id. at 4. During the interview, Mr. Tonelli posed the following question to Respondent regarding Respondent's email communications with his former law clerk subsequent to his December 4, 2007 meeting with Judge Gallipoli: "After December 4, 2007, did you have any additional e-mail exchanges with her, on an extremely intimate personal level regarding your feelings back and forth with each other and any desires ... that you may have had?" P-15 at T31-13 to 18. Respondent replied, "I don't recall any." Id. at T31-19. Respondent similarly testified on October 20, 2008 that after his December 4, 2007 meeting with Judge Gallipoli, his email correspondence with his former law clerk "dropped off." Id. at T30-7 to 23.

B. Count I

Count I of the Formal Complaint charged Respondent with violating Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules by improperly using his Judiciary email to communicate with his former law clerk about matters of a personal and intimate nature and by continuing such conduct after he was warned by Judge Gallipoli

to stop. This charge is supported by clear and convincing evidence, and Respondent's conduct violated the cited Canons of the Code of Judicial Conduct as well as Rule 2:15-8(a)(6). Canon 1 requires judges to maintain high standards of conduct so that the integrity and independence of the Judiciary is preserved. Canon 2A directs that judges conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Finally, Rule 2:15-8(a)(6) prohibits judicial conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The New Jersey Judiciary has an established and long-standing policy regarding personal use of email service provided by the Judiciary. Specifically, "users shall not use these resources for personal use and have no reasonable expectation of privacy regarding this equipment, networks, systems, or these communications...." See P-8 (Administrative Directive #3-06 issued on February 15, 2006 and approved by the Supreme Court on January 10, 2006) at ACJC 043.

Here, the Committee is confronted with hundreds of pages of emails between Respondent and his former law clerk, all of which were written after their professional relationship ended and most of which concern personal and, often, romantic and intimate sentiments. It is irrefutable, therefore, that Respondent violated the Judiciary's policy regarding email usage.

More troubling, however, is Respondent's continued course of conduct in sending personal and romantic emails to his former law clerk via the Judiciary email system after being instructed by Judge Gallipoli to cease such conduct completely. Contrary to Respondent's suggestion, it is immaterial that such emails were "consensual, mutual, and not with a current employee of Respondent." See Respondent's Letter Brief to Committee dated May 29, 2009. In these circumstances, neither the role of Respondent's former law clerk in the email communications nor her status as Respondent's former employee is determinative. The critical focus is on Respondent's conduct. In this regard, only six (6) days after vowing to desist from sending further emails to his former law clerk, Respondent again began to correspond with her via his Judiciary email account. P-9 at ACJC 055. Less than three weeks thereafter, the emails once again assumed an intimate quality. Id. at ACJC 079. Such conduct demonstrates a blatant disregard of the instructions of Respondent's Assignment Judge and of Respondent's own professed acknowledgment of the impropriety of his conduct and his commitment to cease the inappropriate communications.

Further, we reject Respondent's attempts to characterize the emails he exchanged with his former law clerk as "private" and therefore outside the scope of the Code of Judicial Conduct. Clearly, such emails cannot be considered private, confidential

or privileged, nor were the November 28 and 29, 2007 emails private, confidential or privileged once anonymously referred to an employee of the Hudson County Courthouse. The applicable Administrative Directive specifically removes the expectation of privacy and confidentiality from Judiciary-provided email communications. The mandate of the Directive is further consistent with the Code of Judicial Conduct itself, which makes clear that judges must expect to be the "subject of constant public scrutiny" and must therefore "accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." See Commentary to Canon 2 of the Code of Judicial Conduct. See also In re Blackmun, 124 N.J. 547, 551 (1991) ("When judges engage in private conduct that is irresponsible or improper, or can be perceived as involving poor judgment or dubious values, '[p]ublic confidence is eroded.'").

We find that Respondent's breach of the Judiciary policy in question, coupled with his deliberate disregard of his Assignment Judge's instructions to cease his inappropriate emails with his former law clerk, violated Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Such conduct was egregious and damaging to the integrity of the Judiciary in contravention of Canon 1 of the Code of Judicial Conduct. Respondent's conduct was further

antithetical to acting "in a manner that promotes public confidence in the integrity and impartiality of the judiciary" in violation of Canon 2A of the Code.

C. Count II

Count II of the Complaint charged Respondent with (1) violating Canons 1, 2A and 2B of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules by making an unsolicited contact with a State of New Jersey Deputy Public Defender in an attempt to assist his former law clerk in securing employment, and (2) violating Canons 1 and 2A of the Code of Judicial Conduct by acting as a reference for his former law clerk despite his romantic feelings for her. We find, by clear and convincing evidence, that Respondent's conduct, as related in Count II, violated the charged Canons and Rule 2:15-8(a)(6).

Unsolicited recommendations by judges are prohibited by the Supreme Court's Annotated Guidelines for Extrajudicial Activities. P-10. The Guidelines specifically provide that "[r]ecommendations should not be given by phone unless that is clearly the appropriate form of response," and that, with respect to employment sought in the public sector, judges "must never write an unsolicited recommendation."

According to Edward Marable, the New Jersey Deputy Public Defender with whom Respondent spoke on his former law clerk's

behalf, Respondent "placed an unsolicited telephone call to me and told me that his former law clerk ... had expressed an interest in working for the Office of Law Guardian." P-14 at ¶5. It is clear that although Respondent spoke with Mr. Marable over the telephone, that call was initiated by Respondent and was not made in response to an inquiry by Mr. Marable about Respondent's former law clerk. Further, Mr. Marable certified that during the conversation he had with Respondent, Respondent "told me that he thought very highly of [his former law clerk] and that she would do well in that particular area of the law." Id. at ¶6. Under these facts, we find that Respondent's initiated phone call to Mr. Marable was a prohibited, unsolicited recommendation in violation of the Annotated Guidelines for Extrajudicial Activities.

We further find that Respondent's conduct also violated Canon 2B of the Code of Judicial Conduct. Canon 2B prohibits judges from lending the "prestige of office to advance the private interests of others...." Not only did Respondent take the initiative to call Mr. Marable and recommend his former law clerk for employment, he further expressed in an email to his former law clerk that, "[i]f Ed Marable is involved in any decision making, he owes me a favor." P-13 at ACJC 250. Respondent's conduct and his expressed sentiment are a flagrant violation of Canon 2B's prohibition against using one's judicial

office to advance a private interest. Respondent's conduct evinces his reliance on his judicial office and his knowledge of Mr. Marable to assist his former law clerk find employment. Further, Respondent conveyed the impression to his law clerk that she might be hired by Mr. Marable not based upon her own qualifications but based upon Mr. Marable's purported need to repay Respondent in some capacity. Such conduct is strictly prohibited by the Code of Judicial Conduct and dishonors the Judiciary and Mr. Marable.

Respondent's misconduct is further exacerbated by the fact that Respondent provided his recommendation when his interest in his former law clerk was not solely professional. Under these circumstances, Respondent should not have provided any recommendation whatsoever of his former law clerk.

We conclude that Respondent's phone call to Mr. Marable and his favorable review of his former law clerk was an abuse of the prestige of his judicial office and created the very real risk that such office would be an influential factor in Mr. Marable's consideration of the former law clerk. Although Mr. Marable did not hire Respondent's former law clerk, the risk that Respondent created by his behavior was wholly unacceptable and adverse to the manner in which judges should provide employment-related recommendations.

By violating Canon 2B of the Code of Judicial Conduct as expressed above, Respondent's conduct likewise violated Canons 1 and 2A of the Code of Judicial Conduct, as well as Rule 2:15-8(a)(6) of the New Jersey Court Rules. Such conduct brings the Judiciary into disrepute and reduces public confidence in the Judiciary's overall integrity and independence.

D. Count III

Count III of the Formal Complaint against Respondent charged Respondent with violating Canons 1 and 2A of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules by testifying about his interactions with his former law clerk in a misleading manner. We find, by clear and convincing evidence, that Respondent did provide misleading testimony to the Committee, and that such conduct violated the charged Canons and Rule of Court.

When Respondent was interviewed on October 20, 2008 by Committee staff in connection with the Committee's investigation of this matter, Respondent was placed under oath and specifically questioned about the occurrence of email communications between him and his former law clerk after his December 4, 2007 meeting with Judge Gallipoli. We find that Respondent testified inaccurately in two respects about such communications: (1) Respondent testified generally that although it took a "little while," his emails with his former law clerk

eventually did "stop" (P-15 at T42-2 to 21); and (2) Respondent testified that his email communication with his former law clerk "fell off" after December 4, 2007 and did not resume until February 2008 (Id. at T18-2 to 12).

Neither of the foregoing representations is supported by the evidence in this matter. First, as revealed by the numerous emails between Respondent and his former law clerk garnered by the Committee through its investigation, Respondent consistently emailed his former law clerk after his meeting with Judge Gallipoli in December 2007 and continued emailing her well into July 2008. P-9 and P-13. Second, only days after the December 4, 2007 meeting, not only was Respondent back to emailing his former law clerk, but their emails took on an undeniable, increased frequency and intimacy. We found no evidence to support Respondent's allegation that the emails "fell off" in December or his allegation that it took a "little while" for the emails to stop. The evidence establishes that Respondent was still emailing his former law clerk seven (7) months after his conversation with his Assignment Judge.

Although we recognize the discomfiture that Respondent must have faced as a result of the Committee's investigation, we nevertheless find Respondent's failure to testify candidly and accurately, especially as a judicial officer of this State, offensive and disturbing. Respondent has an affirmative

obligation under the Code of Judicial Conduct to "participate in establishing, maintaining, and enforcing, *and should personally observe*, high standards of conduct...." Canon 1 of Code of Judicial Conduct. Respondent's failure to be truthful and forthcoming in connection with this Committee's investigation strayed far from that obligation and impugns the Judiciary's integrity. Such conduct diminishes public confidence in the Judiciary as a whole in violation of Canon 2A of the Code and also constitutes conduct prejudicial to the administration of justice, bringing the judicial office into disrepute, in violation of Rule 2:15-8(a)(6) of the New Jersey Court Rules.

II. RECOMMENDATION

The Committee recommends that Respondent be censured. This recommendation accounts for Respondent's involvement in and responsibility for three separate ethical infractions, which, cumulatively, demonstrate a disturbing lack of good judgment and self-control. We are particularly struck by Respondent's failure to respect the instructions of his Assignment Judge and adhere to the representations he made to his Assignment Judge and to his lack of candor with Committee staff.

Further, we view, as an aggravating factor in this case, Respondent's attempts to minimize, diminish and distinguish his conduct as expressed in the legal memoranda he provided to the Committee. In our view, Respondent's infractions have been

proven clearly and convincingly. Respondent's failure to recognize his errors and take appropriate responsibility for them is unsettling.

For all of these reasons, the Committee respectfully recommends that Respondent be censured for the conduct at issue in this matter.

Respectfully submitted,

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

September 21, 2009

By:



Alan B. Handler, Chair